

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	§	CRIMINAL CASE NO.
	§	
v.	§	1:16-cr-00237-AT-JSA
	§	
JAMES G. MALONEY,	§	
	§	
Defendant.	§	

MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

COMES NOW, James G. Maloney, Defendant herein, by and through the undersigned counsel, and files this, his Motion for Leave to File Additional Motions, and moves for leave to file additional motions following the Government's completion of its discovery obligations under Federal Rule of Criminal Procedure 16, and shows as follows:

Dr. Maloney was indicted on June 28, 2016. *See* Doc. # 1. He was arraigned on June 30, 2016. *See* Doc. # 4. At arraignment, the Government provided Dr. Maloney and his counsel with several compact discs (CDs) as discovery under Federal Rule of Criminal Procedure 16.

Dr. Maloney and his counsel have reviewed all the discovery provided by the Government at arraignment. The thorough review of the discovery has taken Dr. Maloney and his counsel some time.

Upon reviewing the discovery, it has become apparent that the defense has not received all the documents or materials in this case which are subject to Rule 16. The defense believes that there is substantial, additional discovery under Rule 16, which was not provided to the defense at arraignment, and which has not been provided to the defense as of the time of the filing of this Motion. For instance, under Rule 16 the Government is required to disclose any relevant recorded statements. *See* Fed.R.Crim.P. 16(a)(1)(B). The Government expressly alleges in its Indictment that “[i]n or about July 2013, defendant MALONEY and his co-conspirators met to discuss their PCard fraud, get their stories straight, and plan a cover-up. [James D. Fraley, III] recorded these conversations on his phone and later turned the recordings over to the FBI.” Doc. # 1, ¶ 18. Upon information and belief, Dr. Fraley’s recording of Dr. Maloney is not contained in the discovery produced by the Government.

The defense submits that the fact that the Government has not produced to the defense all the discovery required by Rule 16 constitutes “good cause” to grant Dr. Maloney leave to file additional motions following the Government’s completion of its discovery obligations under Rule 16, pursuant to the Order of the Court issued

July 6, 2016. *See* Doc. # 9, § IV(N). “What constitutes good cause varies from case to case.” *Campbell v. Eastland*, 307 F.2d 478, 486 (5th Cir. 1962).

The Court’s Order requires that a party identify the specific motion or motions that may be filed. *See* Doc. # 9, § IV(N). The defense cannot state, at present, which specific motions might be filed based upon any additional discovery provided by the Government. As an example, counsel for the Government played the audio recording of Dr. Maloney by Dr. Fraley for counsel for Dr. Maloney, and counsel for Dr. Maloney recalled that the recording terminated abruptly. Based upon this abrupt termination, the defense believes that the recording may be subject to a motion to exclude based upon the rule of completeness.

Given the fact that the discovery provided by the Government is not complete, the review of discovery by the defense is necessarily not complete. The defense requests that the Government certify that its discovery to Dr. Maloney pursuant to Rule 16 is complete, after all Rule 16 discovery is provided. The defense further requests 21 days after the filing of the certification by the Government to file any additional motions. A proposed order pursuant to the Court’s Order is attached hereto as Exhibit A.

WHEREFORE, Defendant James G. Maloney respectfully requests that this honorable Court grant his Motion for Leave to File Additional Motions, and issue

an order granting Defendant leave to file additional motions following the Government's completion of its discovery obligations under Federal Rule of Criminal Procedure 16.

Respectfully submitted, this 12th day of September, 2016.

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CERTIFICATION

The undersigned hereby certifies that, over the past few months, he has conferred with opposing counsel for the United States of America in a good faith effort to resolve the subject-matter of this Motion by agreement, but was unable to reach agreement on the resolution of the issue therein, pursuant to N.D.Ga.L.Crim.R. 12.1D. The undersigned further certifies, pursuant to N.D.Ga.L.Civ.R. 7.1D, that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in N.D.Ga.L.Civ.R. 5.1B.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 12th day of September, 2016., the undersigned served the foregoing document by filing the document via the Court's Case Management/Electronic Case Filing (CM/ECF) system, which will automatically serve notice of such filing on the following attorneys of record:

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